

RESOLUTION NO. R-2021- 0552

RESOLUTION APPROVING ZONING APPLICATION PDD/DOA-2020-01117
(CONTROL NO. 2016-00078)
a Development Order Amendment
APPLICATION OF Pebb Atlantic LLC
BY WGINC, AGENT
(Plaza Delray)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider applications relating to zoning;

WHEREAS, the notice and public hearing requirements pursuant to Article 2 (Application Processes and Procedures) of the Palm Beach County Unified Land Development Code (ULDC), Ordinance 2003-067 as amended, have been satisfied;

WHEREAS, Zoning Application PDD/DOA-2020-01117 was presented to the Board of County Commissioners at a public hearing conducted on April 22, 2021;

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the Applicant and other interested parties, the recommendations of the various County Review Agencies, and the recommendation of the Zoning Commission;

WHEREAS, the Board of County Commissioners pursuant to Article 2 (Application Processes and Procedures) of the ULDC is authorized and empowered to consider, approve, approve with conditions or deny the request;

WHEREAS, the Board of County Commissioners hereby incorporates by reference the Findings in the staff report addressing the Standards contained in Article 2.B (Public Hearing Processes) for a Development Order Amendment;

WHEREAS, this approval is subject to Article 2.E (Monitoring), of the ULDC and other provisions requiring that development commence in a timely manner;

WHEREAS, the issuance of this Development Permit does not in any way create any rights on the part of the Applicant and/or Property Owner to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law;

WHEREAS, the Palm Beach County Survey Section may administratively correct any scrivener's errors that will not significantly impact the overall boundary of the adopted legal description; and,

WHEREAS, Article 2.B.6.C (Board Action) of the ULDC requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application PDD/DOA-2020-01117, the Application of Pebb Atlantic LLC, by WGINC, Agent, for a Development Order Amendment to reconfigure the Site Plan to add land area and parking spaces; reconfigure building and Type 2 Restaurant square footage; and, reduce overall square footage, on a parcel of land generally described as shown on the legal description in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on April 22, 2021, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Weinroth moved for the approval of the Resolution.

The motion was seconded by Commissioner Weiss and, upon being put to a vote, the vote was as follows:

Commissioner Dave Kerner, Mayor	-	Aye
Commissioner Robert S. Weinroth, Vice Mayor	-	Aye
Commissioner Maria G. Marino	-	Aye
Commissioner Gregg K. Weiss	-	Aye
Commissioner Maria Sachs	-	Aye
Commissioner Melissa McKinlay	-	Aye
Commissioner Mack Bernard	-	Aye

The Mayor thereupon declared that the resolution was duly passed and adopted on April 22, 2021.

Filed with the Clerk of the Board of County Commissioners on April 30th, 2021.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

JOSEPH ABRUZZO,
CLERK & COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1 (FEE SIMPLE):

PARCEL A AND TRACT W-1, OF SENECA PROPERTY MUPD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 128, PAGE (S) 138, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL 2 (EASEMENT):

NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS, INGRESS, AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS DESCRIBED IN THAT CERTAIN RECIPROCAL ACCESS EASEMENT AS RECORDED MARCH 14, 2017 IN OFFICIAL RECORDS BOOK 28946, PAGE 962; AND AS AFFECTED BY FIRST AMENDMENT TO RECIPROCAL ACCESS AGREEMENT AS RECORDED MARCH 7, 2019 IN OFFICIAL RECORDS BOOK 30462, PAGE 785, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, OVER AND ACROSS THE PROPERTY DESCRIBED THEREIN.

TOGETHER WITH:

PARCEL 3 (FEE SIMPLE):

THE EASTERLY 23.40 FEET OF TRACT 14, THE PALM BEACH FARMS CO. PLAT NO. 1, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 26, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT THE NORTHERLY 52.48 FEET CONVEYED TO THE LAKE WORTH DRAINAGE DISTRICT BY CHANCERY CASE NO. 407 RECORDED IN O.R. BOOK 6495, PAGE 761.

ALSO KNOWN AS:

ALL THAT PORTION OF PARCEL A AND TRACT W-1, SENECA PROPERTY MUPD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 128, PAGES 138 AND 139, LYING SOUTH OF THE LAKE WORTH DRAINAGE DISTRICT L-34 CANAL, AS RECORDED IN OFFICIAL RECORD BOOK 6495, PAGE 761, TOGETHER WITH A PORTION OF TRACT 14 OF SECTION 20, THE PALM BEACH FARMS COMPANY PLAT NO. 1, AS RECORDED IN PLAT BOOK 2, PAGE 26, ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND NAIL AND DISK STAMPED "PRM LB3300", AS SHOWN MONUMENTING THE NORTHWEST CORNER OF SAID SENECA PROPERTY MUPD; THENCE S.01°58'54"E., ALONG THE WEST LINE THEREOF, A DISTANCE OF 0.19 FEET TO A POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF THE LAKE WORTH DRAINAGE DISTRICT L-34 CANAL, AS RECORDED IN OFFICIAL RECORD BOOK 6495, PAGE 761 OF SAID PUBLIC RECORDS, AND THE POINT OF BEGINNING; THENCE CONTINUE S.01°58'54"E., ALONG SAID WEST LINE, A DISTANCE OF 638.21 FEET TO THE SOUTHWEST CORNER OF SAID SENECA PROPERTY MUPD; THENCE N.89°23'06"E. ALONG THE SOUTH LINE OF SAID SENECA PROPERTY MUPD AND TRACT 14 OF SECTION 20, A DISTANCE OF 330.61 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 14 OF SECTION 20; THENCE N.01°51'46"W. ALONG THE EAST LINE THEREOF, A DISTANCE OF 634.51 FEET TO A POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID LAKE WORTH DRAINAGE DISTRICT L-34 CANAL, SAID RIGHT-OF-WAY LINE LYING 52.48 FEET SOUTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE NORTH LINE OF SECTION 20, TOWNSHIP 46 SOUTH, RANGE 42 EAST; THENCE N.89°58'57"W. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 332.03 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN SECTION 20, TOWNSHIP 46 SOUTH, RANGE 42 EAST,
PALM BEACH COUNTY, FLORIDA.

CONTAINING 210,751 SQUARE FEET/4.8382 ACRES MORE OR LESS.

EXHIBIT B
VICINITY SKETCH

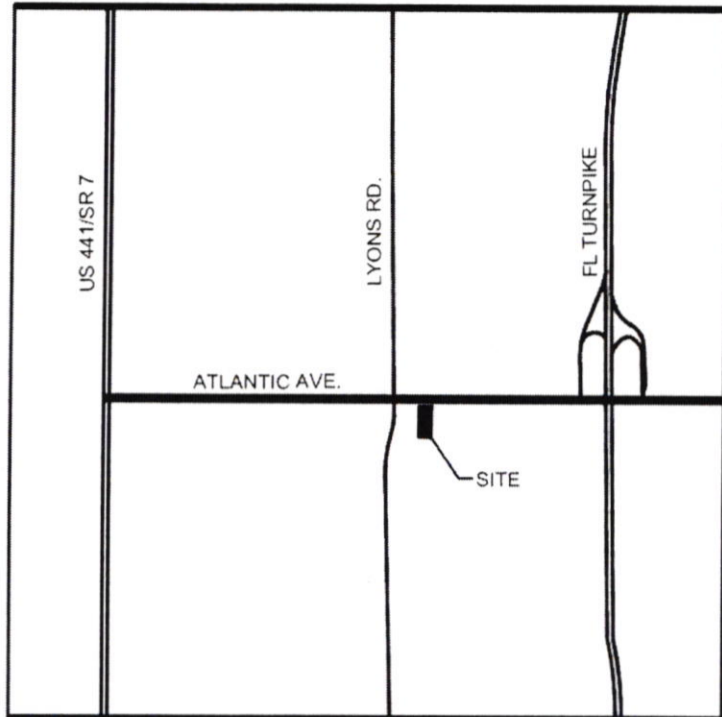


EXHIBIT C

CONDITIONS OF APPROVAL

Development Order Amendment

ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2017-501, Control No.2016-00078, which currently states:

The approved Preliminary Site Plans and Regulating Plan are dated January, 23 2017. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission.

Is hereby amended to read:

The approved Preliminary Site Plan is dated February 8, 2021. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

2. All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2017-0501 (Control 2016-00078), have been consolidated as contained herein. The Property Owner shall comply with all previous Conditions of Approval and deadlines previously established by Article 2.E of the Unified Land Development Code and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

ARCHITECTURAL REVIEW

1. At time of Building Permit, the Architectural Elevations for Building C shall be submitted for review and approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC). Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements. (BLDGPMT: ZONING - Zoning) [Note: COMPLETED] (Previous ARCHITECTURAL REVIEW Condition 1 of Resolution R-2017-501, Control No.2016-00078)

ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property Owner shall be restricted to the following phasing schedule:

a. No Building Permits for the site may be issued after December 31, 2021. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering) (Previous ENGINEERING Condition 1 of Resolution R-2017-501, Control No.2016-00078)

2. Prior to the issuance of the first building permit, the Property Owner shall provide to Florida Department of Transportation (FDOT) by deed additional right of way for the construction of a right turn lane on Atlantic Avenue at the project's entrance road. This right of way shall be a minimum of 280 feet in storage length, a minimum of twelve feet in width and a taper length of 50 feet or as approved by FDOT. The right of way shall be continued across the project entrance and shall be free and clear of all encumbrances and encroachments. Property Owner shall provide FDOT with sufficient documentation, including, at minimum, sketch and legal description of the area to be conveyed, copy of the site plan, a Phase I Environmental Site Assessment, status of property taxes, statement from Tax Collector of delinquent and pro-rata daily taxes, full owner name(s) of area to be

conveyed and one of the following: title report, attorney's opinion of title, title commitment or title insurance policy, or as otherwise required and acceptable to FDOT. The Property Owner must warrant that the property being conveyed to FDOT meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County and FDOT harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney's fees as well as the actual cost of the clean up. Thoroughfare Plan Road right of way conveyances shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include where appropriate, as determined by the County Engineer, additional right of way for Expanded Intersections and corner clips. The Property Owner shall coordinate conveyance of right of way directly with FDOT and shall provide evidence to Palm Beach County Land Development Division once conveyance has been completed. [Note: COMPLETED] (Previous ENGINEERING Condition 2 of Resolution R-2017-501, Control No.2016-00078)

3. Prior to issuance of the first Certificate of Occupancy, the Property Owner shall construct and receive a satisfactory final inspection from FDOT for a right turn lane west approach on Atlantic Avenue at the project entrance. This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the Property Owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way. (BLDGPM/CO: MONITORING - Engineering) (Previous ENGINEERING Condition 3 of Resolution R-2017-501, Control No.2016-00078)

4. Prior to issuance of the first building permit, the Property Owner shall provide to Palm Beach County sufficient public road drainage easement(s) through the project's internal drainage system, as required by and approved by the County Engineer, to provide legal positive outfall for runoff from those segments of Atlantic Avenue along the property frontage; and a maximum of an additional 800 feet of these adjacent roadway(s), unless FDOT deems this additional drainage to be unnecessary and the condition can be marked complete. The limits of this additional 800 feet of drainage shall be determined by the County Engineer. Said easements shall be no less than 20 feet in width. Portions of such system not included within roadways or waterways dedicated for drainage purposes will be specifically encumbered by said minimum 20 foot drainage easement from the point of origin, to the point of legal positive outfall. The drainage system within the project shall have sufficient water quality, water quantity and, when necessary, compensating storage capacity within this project's system as required by all permitting agencies, as well as conveyance capacity to meet the storm water discharge and treatment requirements of Palm Beach County, the applicable Drainage District, and the South Florida Water Management District, for the combined runoff from the project to accommodate the ultimate Thoroughfare Plan Road Section(s) of the included segment. Specifically, one through lane must be open during the 25-year, 3-day storm and the elevation for the 3-year, 1-day storm event shall provide sufficient freeboard to allow for efficient roadway drainage system design. If required and approved by the County Engineer, the Property Owner shall construct within the proposed drainage easements a minimum of 24 inch closed piping system and appropriate wingwall or other structures as required by and approved by the County Engineer. Elevation and location of the entire drainage system shall be approved by the County Engineer. Any and all excess fill material from excavation by Palm Beach County within said easements shall become the property of Palm Beach County which at its discretion may use this fill material. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (BLDGPM/CO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 4 of Resolution R-2017-501, Control No.2016-00078)

5. The Property Owner shall design, install and perpetually maintain median landscape within the median of all abutting right of way of Atlantic Avenue. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only

Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires County Engineer approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph c below.

a. The necessary permit(s) for this landscaping and irrigation shall be applied for from the Florida Department of Transportation prior to the issuance of the first building permit. (BLDGPM: ENGINEERING - Monitoring) [Note: COMPLETED]

b. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (BLDGPM/CO: ENGINEERING - Monitoring) [Note: COMPLETED]

c. Alternately, at the option of the Property Owner or if the construction of the required landscape and irrigation is not possible due to physical constraints, the Property Owner may make a contribution to Palm Beach County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beautification program prior to the issuance of the first Building Permit. This payment option is only available if the roadway segment is included in the County's current OTIS Master Plan and shall be based on the project's front footage along Atlantic Avenue. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (BLDGPM: ENGINEERING - Monitoring) [Note: COMPLETED] (Previous ENGINEERING Condition 5 of Resolution R-2017-501, Control No.2016-00078)

6. Prior to issuance of the first building permit the Property Owner shall configure the property into a single lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDGPM: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 6 of Resolution R-2017-501, Control No.2016-00078)

7. Prior to approval by the Development Review Officer, the Property Owner shall either provide copies of the executed shared cross access easement for access onto Atlantic Avenue or provide a conceptual approval from FDOT to allow a separate access point directly into this property. (DRO: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 7 of Resolution R-2017-501, Control No.2016-00078)

8. No Building Permits shall be issued until the Property Owner makes a proportionate share payment of \$377,121.60 to widen Atlantic Ave from SR-7 to Lyons Rd from a 2-lane facility to a 4-lane divided facility . Note that while this proportionate share payment is based on proportionate cost of a specific roadway improvement, the County, in its sole discretion may apply such payment to one or more mobility improvements to regionally significant transportation facilities. The proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth in Condition 9. Any road impact fees paid by the Developer on this project prior to this proportionate share payment will be applied as a credit toward the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility in the area. (BLDGPM: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 8 of Resolution R-2017-501, Control No.2016-00078)

9. In recognition that construction prices may change over the life of the project, the proportionate share payments included in Condition 8 above shall be subject to the following escalator calculation:

Adjusted Payment (when payment is being made) = Original Payment Amount x Cost Adjustment Factor

Where,

Original Payment Amount = Proportionate Share Payment amount specified in the Proportionate Share Agreement

Cost Adjustment Factor = (Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of payment))/(Producer Price Index (PPI) for Commodities Code

ID WPUIP2312301 (month of Prop Share Execution))

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPUIP2312301), can be found at <http://data.bls.gov/timeseries/WPUIP2312301>.

If at the time a Proportionate Share payment is due, the Commodities Code ID WPUIP2312301 is no longer used by the United States Bureau of Labor Statistics, the Adjusted Payment will be based on the Producer Price Index for non-residential commodities then in effect. In the event such an index is no longer in use, the Adjusted Payment will be based on the United States Bureau of Labor Statistics Consumer Price Index then in effect. (ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 9 of Resolution R-2017-501, Control No.2016-00078)

10. No Building Permits for Phase II of the development (anything besides the 2,000 sf fast food restaurant with drive-through) shall be issued until the contracts have been let for the Assured Construction improvements to widen Lyons Road from Atlantic Ave to Clint Moore Rd from 2 lanes to 4 lanes divided. (BLDGPM: MONITORING - Engineering) (Previous ENGINEERING Condition 10 of Resolution R-2017-501, Control No.2016-00078)

11. Prior to the issuance of the first building permit, the Property Owner shall configure the property into a legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code or as otherwise approved by the County Engineer. (BLDGPM: MONITORING - Engineering)

LANDSCAPE - GENERAL

1. A minimum of three (3) Royal Palms or a similar specie that is acceptable to the Landscape Section shall be planted adjacent to the access point along Atlantic Avenue. Palms shall have a minimum of six (6) foot of grey wood at installation. (BLDGPM: ZONING - Zoning) [Note: COMPLETED] (Previous LANDSCAPE - GENERAL Condition 1 of Resolution R-2017-501, Control No.2016-00078)

PLANNING

1. Previous PLANNING Condition 1 of Resolution R-2017-501, Control No.2016-00078, which currently states:

Per LGA-2017-001, Ordinance 2017-006 condition1: Development of commercial and/or office uses on the site are limited to a maximum of 38,538 square feet total.

Is hereby amended to read:

For the western 4.509-acre portion of the site: Per LGA-2017-001, Ordinance 2017-006 condition 1: Development of commercial retail and/or office uses on the site are limited to a maximum of 38,538 square feet total. (ONGOING: PLANNING - Planning)

2. For the eastern 0.33-acre portion of the site: Per LGA-2021-006, condition 1: The Commercial Low Future land use designation shall have no intensity or square footage. (ONGOING: PLANNING - Planning)

COMPLIANCE

1. In Granting this Approval, the Board of County Commissioners relied upon the oral and written representations of the Property Owner/Applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the Approval to be presented to the Board of County Commissioners for review under the Compliance Condition of this Approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:

a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, owner, lessee, or user of the subject property; the Revocation of any other permit, license or

approval from any developer, owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or

b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or

c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing Conditions of Approval; and/or

d. Referral to Code Enforcement; and/or

e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any Condition of Approval. (ONGOING: MONITORING - Zoning)

DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.